IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6209 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GANESHBHAI RAYCHANDBHAI MADHVALA - Petitioner(s)

Versus

DISTRICT DEVELOPMENT OFFICER & 2 - Respondent(s)

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Appearance :

MR BN PATEL for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 3
MR HS MUNSHAW for Respondent(s) : 1,
MR SIRAJ GORI, AGP for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 17/11/2005

ORAL JUDGMENT

In the present petition, the petitioner who was an elected Sarpanch of village Laxmipura has challenged the order passed by the District Development Officer on 7th

April 2004 by which the petitioner came to be removed from the position of Sarpanch in exercise of powers under section 57(1) of the Gujarat Panchayats Act, 1993. The petitioner is also aggrieved by the order passed by the Additional Development Commissioner on 15.5.2004 by which the appeal of the petitioner against the order of the District Development Officer was rejected.

2. The sole charge against the petitioner was that he had encroached upon an area of 30 ft. x 28 ft. in and around his house which was the gamtel land in which he had constructed steps, stair-case and bath room, etc. For this alleged misconduct, the petitioner was called upon to explain as to why he should not be removed as Sarpanch. By filing reply, the petitioner denied the charges. Before the District Development Officer, it was contended that the occupation of the land in question was not after he was elected as Sarpanch and that he in fact has been in occupation of the said land even prior to independence. It was further contended that he has not committed any misconduct.

3. Before this Court, it was urged on behalf of the petitioner that his construction has already been

regularised by the Gram Panchayat by resolution dated 4.2.86. Learned advocate Shri Munshaw appearing for the District Development Officer, however, submitted that there was no material before the authority to establish that the petitioner is enjoying the possession of the land in question even prior to independence nor was the resolution dated 4.2.86 pressed in service before the District Development Officer by the petitioner. He further submitted that the encroached land occupied by the petitioner is part of the village road and even if the same land was encroached upon before the petitioner was elected as Sarpanch, as a Sarpanch it was his duty to voluntarily remove his encroachment which the petitioner did not do. In fact, the petitioner took no steps to vacate the land even after the show cause notice was issued to him.

4. The material to establish that the petitioner was in possession of the land since many decades was not produced before the authorities. Resolution dated 4.2.86 was also not produced. At the same time, the materials sought to be relied upon by Shri Munshaw suggesting the land in question is part of the village road was neither before the District Development Officer nor supplied to

the petitioner. On account of these circumstances, I find that it would be appropriate that the entire issue be decided by the District Development Officer afresh after permitting the petitioner to produce further material on record as also supplying copies of the documents which the authorities wish to place reliance upon.

5. For the above purpose, the impugned orders passed by the District Development Officer and the Additional Development Commissioner are quashed. The proceedings are remanded to the District Development Officer for fresh consideration and disposal in accordance with law. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

(vjn)